



Reprinted
March 27, 2009

ENGROSSED SENATE BILL No. 469

DIGEST OF SB 469 (Updated March 26, 2009 2:18 pm - DI 102)

Citations Affected: IC 34-6; IC 34-20; IC 34-31.

Synopsis: Causes of action and limited liability for certain asbestos claims. Limits civil liability arising from asbestos claims for certain corporations. Provides for a one year period, ending July 1, 2010, to file an otherwise time-barred product liability cause of action based on exposure to asbestos.

Effective: July 1, 2009.

Boots, Tallian, Buck

(HOUSE SPONSORS — GRUBB, BROWN T, KOCH, VAN HAAFTEN)

January 14, 2009, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

February 12, 2009, amended, reported favorably — Do Pass.

February 16, 2009, read second time, amended, ordered engrossed.

February 17, 2009, engrossed.

February 19, 2009, read third time, passed. Yeas 50, nays 0.

HOUSE ACTION

March 3, 2009, read first time and referred to Committee on Judiciary.

March 12, 2009, reported — Do Pass.

March 26, 2009, read second time, amended, ordered engrossed.

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ES 469—LS 7555/DI 107+



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First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 469

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 34-6-2-11.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2009]: **Sec. 11.5. "Asbestos claim", for purposes of IC 34-31-8,**
4 **has the meaning set forth in IC 34-31-8-1.**
- 5 SECTION 2. IC 34-6-2-29.5 IS ADDED TO THE INDIANA CODE
6 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
7 1, 2009]: **Sec. 29.5 "Corporation", for purposes of IC 34-31-8, has**
8 **the meaning set forth in IC 34-31-8-2.**
- 9 SECTION 3. IC 34-6-2-69.5 IS ADDED TO THE INDIANA CODE
10 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
11 1, 2009]: **Sec. 69.5. "Innocent successor corporation", for purposes**
12 **of IC 34-31-8, has the meaning set forth in IC 34-31-8-3.**
- 13 SECTION 4. IC 34-6-2-142.5 IS ADDED TO THE INDIANA
14 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
15 [EFFECTIVE JULY 1, 2009]: **Sec. 142.5. "Successor asbestos related**
16 **liability", for purposes of IC 34-31-8, has the meaning set forth in**
17 **IC 34-31-8-4.**

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SECTION 5. IC 34-6-2-143.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 143.8. "Transferor corporation", for purposes of IC 34-31-8, has the meaning set forth in IC 34-31-8-5.**

SECTION 6. IC 34-20-3-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) A product liability action that is based on:

- (1) property damage resulting from asbestos; or
- (2) personal injury, disability, disease, or death resulting from exposure to asbestos;

must be commenced within two (2) years after the cause of action accrues. The subsequent development of an additional asbestos related disease or injury is a new injury and is a separate cause of action.

(b) A product liability action for personal injury, disability, disease, or death resulting from exposure to asbestos accrues on the date when the injured person knows that the person has an asbestos related disease or injury.

(c) A product liability action for property damage accrues on the date when the injured person knows that the property damage has resulted from asbestos.

(d) This section applies only to product liability actions against:

- (1) persons who mined ~~and~~ or sold ~~commercial~~ asbestos **containing products that were not sold in individual quantities for personal or household consumption;** and
- (2) funds that have, as a result of bankruptcy proceedings or to avoid bankruptcy proceedings, been created for the payment of asbestos related disease claims or asbestos related property damage claims.

~~(e) For the purposes of IC 1-1-1-8, if any part of this section is held invalid, the entire section is void.~~

~~(f)~~ (e) Except for the cause of action expressly recognized in this section, this section does not otherwise modify the limitation of action or repose period contained in section 1 of this chapter.

(f) A cause of action expressly recognized in this section that:

- (1) accrued before July 1, 2009; and**
 - (2) was barred before July 1, 2009, by the period of limitations or repose contained in section 1 of this chapter;**
- may be commenced after June 30, 2009, and before July 1, 2010, notwithstanding any other law to the contrary.**

SECTION 7. IC 34-31-8 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY

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Chapter 8. Limited Liability Concerning Asbestos Related Claims

Sec. 1. As used in this chapter, "asbestos claim" means any claim for damages, losses, indemnification, contribution, or other relief concerning asbestos, including:

(1) a claim relating to the health effects of exposure to asbestos, including:

(A) personal injury;

(B) death;

(C) mental injury;

(D) emotional injury;

(E) risk of disease or other injury; or

(F) the costs of medical monitoring or surveillance;

(2) a claim made by or on behalf of any person exposed to asbestos, including a claim of a:

(A) representative;

(B) spouse;

(C) parent;

(D) child; or

(E) other relative;

of a person exposed to asbestos; and

(3) a claim for damage or loss caused by the:

(A) installation;

(B) presence; or

(C) removal of asbestos.

Sec. 2. As used in this chapter, "corporation" means a corporation for profit, including a domestic corporation organized under Indiana law or a foreign corporation organized under the law of a jurisdiction other than Indiana.

Sec. 3. (a) As used in this chapter, "innocent successor corporation" means a corporation that:

(1) assumes;

(2) incurs;

(3) has assumed; or

(4) has incurred;

successor asbestos related liability and became a successor corporation due to a merger or consolidation with another corporation before January 1, 1972.

(b) The term includes a corporation into which an innocent successor corporation is at any time subsequently merged or consolidated.

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(c) The term does not include a corporation that, after a merger, a consolidation, or the exercise of control or the ownership of stock of the corporation before the merger or consolidation, continues in the business of:

- (1) mining asbestos;
- (2) selling or distributing asbestos fibers; or
- (3) manufacturing, distributing, removing, or installing asbestos containing products that are the same, or substantially the same, as those products previously manufactured, distributed, removed, or installed by the transferor corporation.

Sec. 4. As used in this chapter, "successor asbestos related liability" means any liability that is related to an asbestos claim that was assumed or incurred by a corporation as a result of:

- (1) a merger or consolidation with another corporation;
- (2) the plan of merger or consolidation related to the merger or consolidation; or
- (3) the exercise of control or the ownership of stock of the corporation before the merger or consolidation.

Sec. 5. As used in this chapter, "transferor corporation" means a corporation from which a successor asbestos related liability was assumed or incurred.

Sec. 6. This chapter shall be construed liberally regarding innocent successor corporations.

Sec. 7. This chapter applies to a civil action asserting an asbestos claim that is filed against an innocent successor corporation:

- (1) after June 30, 2009; or
- (2) before July 1, 2009, if trial has not commenced as of July 1, 2009.

Sec. 8. (a) Subject to subsections (c) and (d) and sections 10 and 12 of this chapter, the cumulative successor asbestos related liabilities of an innocent successor corporation are limited to the fair market value of the total gross assets of the transferor corporation, determined as of the time of the merger or consolidation through which the innocent successor corporation assumed or incurred successor asbestos related liability.

(b) An innocent successor corporation is not responsible for successor asbestos related liability in excess of the limitation set forth in subsection (a).

(c) For purposes of this section, if a transferor corporation assumed or incurred successor asbestos related liability in connection with a merger or consolidation with a prior transferor

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corporation, the fair market value of the total gross assets of the prior transferor corporation determined as of the time of the earlier merger or consolidation shall be substituted for the limitation set forth in subsection (a) to determine the limitation of liability of the innocent successor corporation.

(d) Cumulative successor asbestos related liabilities include liabilities that exist after the merger or consolidation of the innocent successor corporation and the transferor corporation and that are paid or discharged by or on behalf of the:

- (1) innocent successor corporation; or
- (2) transferor corporation;

as part of a settlement or judgment in Indiana or another jurisdiction.

Sec. 9. The limitations set forth in section 8 of this chapter apply to the successor asbestos related liability of an innocent successor corporation and do not apply to:

- (1) worker's compensation benefits paid by or on behalf of an employer to an employee under IC 22-3 or a comparable worker's compensation law in another jurisdiction;
- (2) a claim against a corporation that is not a successor asbestos related liability;
- (3) any obligation under the federal National Labor Relations Act (29 U.S.C. 151, et. seq.); or
- (4) a collective bargaining agreement.

Sec. 10. (a) An innocent successor corporation may establish the fair market value of the total gross assets, including intangible assets, of a transferor corporation to determine limitations under section 8 of this chapter by any reasonable method, including:

- (1) by reference to the going concern value of the assets;
- (2) by reference to the purchase price attributable to or paid for assets in an arms length transaction; or
- (3) in the absence of other readily available information from which the fair market value can be determined, by reference to the value of the assets recorded on a balance sheet.

Sec. 11. (a) If the total gross assets of a transferor corporation include liability insurance issued to the transferor corporation, this chapter does not affect the applicability, terms, conditions, or limits of the liability insurance.

(b) This chapter does not affect the rights and obligations of an insurer, transferor, or successor under an insurance contract or any related agreements, including:

- (1) preenactment settlements resolving coverage related

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disputes; or

(2) contracts regarding the rights of an insurer to seek payment for applicable deductibles, retrospective premiums, self insured periods, or periods as to which insurance is uncollectible or unavailable.

(c) A settlement of a dispute concerning liability insurance coverage entered into by a:

(1) transferor corporation; or

(2) successor corporation;

with the insurers of a transferor corporation before July 1, 2009, is determinative of the total coverage of liability insurance to be included in the calculation of a transferor corporation's total gross assets under this chapter.

Sec. 12. (a) Except as provided in subsections (b) through (d), the sum determined as the fair market value of the total gross assets of a transferor corporation as of the time of a merger or consolidation for purposes of determining the limit on the cumulative successor asbestos related liabilities of an innocent successor corporation under this chapter shall be adjusted annually at a rate equal to the sum of the following:

(1) The prime rate listed in the first edition of the Wall Street Journal published for each calendar year since the merger or consolidation. If the prime rate is not published in the first edition of the Wall Street Journal, then a reasonable determination of the prime rate on the first day of the year may be used.

(2) One percent (1%).

(b) The rate described in subsection (a) may not be compounded.

(c) The adjustment of the fair market value of the total gross assets of the transferor corporation as of the time of the merger or consolidation shall continue as described in subsection (a) until the date as of which the adjusted value is first exceeded by the cumulative amounts of successor asbestos related liabilities paid or committed to be paid by or on behalf of:

(1) the innocent successor corporation;

(2) any predecessor corporation; and

(3) the transferor corporation;

after the time of the merger or consolidation.

(d) No adjustment of the fair market value of total gross assets of a transferor corporation under this section shall be applied to any liability insurance.

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COMMITTEE REPORT

Madam President: The Senate Committee on Corrections, Criminal, and Civil Matters, to which was referred Senate Bill No. 469, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 3, between lines 7 and 8, begin a new paragraph and insert:

"(c) The term does not include a corporation that, after a merger, a consolidation, or the exercise of control or the ownership of stock of the corporation before the merger or consolidation, continues in the business of:

- (1) mining asbestos;**
- (2) selling or distributing asbestos fibers; or**
- (3) manufacturing, distributing, removing, or installing asbestos containing products that are the same, or substantially the same, as those products previously manufactured, distributed, removed, or installed by the transferor corporation."**

and when so amended that said bill do pass.

(Reference is to SB 469 as introduced.)

STEELE, Chairperson

Committee Vote: Yeas 10, Nays 1.

 SENATE MOTION

Madam President: I move that Senate Bill 469 be amended to read as follows:

Page 4, line 33, after "assets" insert ", **including intangible assets,**".

(Reference is to SB 469 as printed February 13, 2009.)

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred Senate Bill 469, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

LAWSON L, Chair

Committee Vote: yeas 9, nays 0.

HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 469 be amended to read as follows:

Page 2, between lines 5 and 6, begin a new paragraph and insert:

"SECTION 6. IC 34-20-3-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) A product liability action that is based on:

- (1) property damage resulting from asbestos; or
- (2) personal injury, disability, disease, or death resulting from exposure to asbestos;

must be commenced within two (2) years after the cause of action accrues. The subsequent development of an additional asbestos related disease or injury is a new injury and is a separate cause of action.

(b) A product liability action for personal injury, disability, disease, or death resulting from exposure to asbestos accrues on the date when the injured person knows that the person has an asbestos related disease or injury.

(c) A product liability action for property damage accrues on the date when the injured person knows that the property damage has resulted from asbestos.

(d) This section applies only to product liability actions against:

- (1) persons who mined ~~and~~ **or** sold ~~commercial~~ **asbestos containing products that were not sold in individual quantities for personal or household consumption;** and
- (2) funds that have, as a result of bankruptcy proceedings or to avoid bankruptcy proceedings, been created for the payment of asbestos related disease claims or asbestos related property damage claims.

~~(e) For the purposes of IC 1-1-1-8, if any part of this section is held invalid, the entire section is void.~~

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(f) (e) Except for the cause of action expressly recognized in this section, this section does not otherwise modify the limitation of action or repose period contained in section 1 of this chapter.

(f) A cause of action expressly recognized in this section that:

(1) accrued before July 1, 2009; and

(2) was barred before July 1, 2009, by the period of limitations or repose contained in section 1 of this chapter; may be commenced after June 30, 2009, and before July 1, 2010, notwithstanding any other law to the contrary."

Renumber all SECTIONS consecutively.

(Reference is to ESB 469 as printed March 13, 2009.)

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